

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-777

November 4, 2003

PUBLIC UTILITIES COMMISSION
Investigation of Cornerstone Communication
Inc.'s 10/15/03 Rapid Response Complaint

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we adopt the Recommendation of the Rapid Response Team (RRT) and open an investigation into Cornerstone Communication Inc.'s (Cornerstone) 10/15/03 Rapid Response Complaint. We also request comment on the legal issue regarding the methods by which a competitive local exchange carrier (CLEC) can access Verizon's distribution subloops.

II. BACKGROUND

On October 15, 2003, Cornerstone filed a Complaint under the Commission's Rapid Response Process (RRP). A copy of the redacted version of the Complaint is attached as Exhibit A. In its Complaint, Cornerstone alleged that Verizon was unwilling to give Cornerstone access to Verizon's facilities in and around its Remote Terminal enclosures for the purposes of accessing Verizon's distribution subloops and possible collocation within Verizon's Remote Terminal. Cornerstone alleged that Verizon's actions were inconsistent with the terms of the Interconnection Agreement between Cornerstone and Verizon, Verizon's Collocation Tariff, the Telecommunications Act of 1996, and the public policy interests of the State of Maine. Cornerstone requested that the RRT order Verizon to: (1) immediately schedule and perform the splicing requested by Cornerstone; (2) immediately make its Remote Terminal site available for inspection; and (3) assign a Staff member to observe and mediate the process of developing procedures for collocation and access to Verizon's subloop unbundled network elements (UNEs).

On October 17, 2003, a conference call was held by the RRT, Cornerstone and Verizon. During that call, issues relating to the inspection of Verizon's Remote Terminal were discussed and a tentative resolution was discussed. With respect to the issues relating to splicing, it became very clear that resolution of Cornerstone's Complaint, would require an interpretation of certain provisions of the Federal Communications Commission's (FCC) *Triennial*

*Review Order.*¹ Specifically, paragraph 254 of the TRO, which discusses CLEC access to ILEC copper subloops, contains the following language:

We define the copper subloop UNE as the distribution portion of the copper subloops that is technically feasible to access at terminals in the incumbent LEC's outside plant....including inside wire. We find that any point on the loop where technicians can access the cable without removing a splice case constitutes an accessible terminal. As HTBC [High Tech Broadband Coalition] points out, a non-exhaustive list of these points includes the pole or pedestal, the serving area interface (SAI), the NID itself, the MPOE, the remote terminal and the feeder/distribution interface. ***To facilitate competitive LEC access to the copper subloop UNE, we require incumbent LECs to provide, upon site-specific request, access to the copper subloop at a splice near their remote terminals.***

(*emphasis added*) The FCC's Rules contains a similar statement regarding the definition of accessible terminal and site-specific requests:

A point of technically feasible access is any point in the incumbent LEC's outside plant where a technician can access the copper wire within a cable without removing a splice case. Such points include, but are not limited to, a pole or pedestal, the serving area interface, the network interface device, the minimum point of entry, any remote terminal, and the feeder/distribution interface. ***An incumbent LEC shall, upon a site-specific request, provide access to a copper subloop at a splice near a remote terminal.*** The incumbent LEC shall be compensated for providing this access in accordance with §§ 51.321 and 51.323.

47. C.F.R. § 51.310(b)(1)(i) (*emphasis added*).

Cornerstone believes the TRO and accompanying Rules allow it to access Verizon's subloops at the Verizon feeder/distribution interface (FDI). In order to reach the FDI, Cornerstone seeks to splice into spare cable pairs in a Verizon distribution cable at an existing splice case near the remote terminal and FDI.

¹¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338 (rel. August 21, 2003) (*Triennial Review Order or TRO*).

The distribution cable in question brings Verizon's copper subloops in Verizon's distribution plant to their terminations on binding posts within the FDI. (See Attachments 2 (diagram) and 3 (explanation) to Cornerstone's Complaint.) Verizon believes that Cornerstone's access can be limited to accessible terminals and that the FCC's requirement that ILECs make routine modifications to their network to accommodate a CLEC's request for UNEs does not modify the requirement for an accessible terminal.

III. RAPID RESPONSE TEAM RECOMMENDATION

On October 28, 2003, the Commission's RRT issued its Recommendation. The RRT pointed out that the RRP was adopted by the Commission during the Verizon 271 Review Process.² The RRP was designed to address operational issues that arose between and among Verizon and CLECs that required quick resolution. The RRP was not designed to address broad legal or policy questions relating to ILEC/CLEC relations.

The RRT stated that it believed that interpretation of specific provisions of the TRO involved serious legal and policy considerations that should be addressed by the full Commission rather than the RRT and that the issues raised by Cornerstone were important and required a swift response. Accordingly, the RRT recommended that the Commission open an investigation into Cornerstone's 10/15/03 Rapid Response Complaint and that it set a deadline of November 7, 2003, for parties to file legal briefs addressing the following questions:

1. Does paragraph 254 of the TRO and/or 47 CFR 51.319(b)(1)(i) add an additional point of access to an ILEC's network, beyond an accessible terminal? Please explain the basis for your position and provide references to any other provisions of the TRO, FCC Rules, or FCC record that support your position.
2. Does the Commission have any jurisdiction to modify the FCC's requirements relating to access to subloops? Please explain the basis for your position and provide references to the TRO or FCC Rules that support your position.

IV. DECISION

We agree with the RRPT that the issues raised by Cornerstone's 10/15/03 Rapid Response Complaint require further investigation by the full Commission. Accordingly, we formally open this Investigation. In addition, we also agree with the RRPT that the legal issue and questions posed in Section III above require

² See Commission's Investigation Into Verizon's Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 2000-849, Order (April 10, 2002).

comment from the parties and thus, we establish a deadline of **November 7, 2003**, for submission of briefs.

Dated at Augusta, Maine, this 4th day of November, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.